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Attorney for Plaintiffs
Automattic Inc. and
Oliver Hotham

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AUTOMATTIC INC. and
OLIVER HOTHAM,

Plaintiffs,

v.

NICK STEINER,

Defendant.

Case No. 3:13-cv-5413-JCS

**SUPPLEMENTAL DECLARATION OF
JOSEPH C. GRATZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT NICK
STEINER**

Date: October 3, 2014
Time: 9:30 am
Ct rm: G - 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Joseph C. Gratz, declare as follows:

2 1. I am a partner with the law firm of Durie Tangri LLP, and I am one of the attorneys
3 representing Automattic Inc. in this matter. I have personal knowledge of the facts set forth herein, and if
4 called upon to testify, I could and would testify competently and completely to the statements made
5 herein.

6 2. Automattic retained my firm as counsel in this matter on September 5, 2013. Oliver
7 Hotham retained my firm as counsel in this matter on September 26, 2013.

8 3. To determine reasonable hourly rates for attorneys' fees, courts consider many factors
9 including, the novelty and difficulty of the issues, experience of the attorneys, the forum in which the
10 district court sits, and the fees that comparable private attorneys with similar ability and reputation
11 charge. *See Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir. 2003); *Moreno v. City of Sacramento*, 534
12 F.3d 1106, 1114 (9th Cir. 2008); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007).

13 4. So far, three attorneys at my firm have worked on this matter: me, Michael Page, and
14 Michael Feldman.

15 5. I graduated from the University of Minnesota Law School in 2005 and have practiced in
16 intellectual property litigation since that time. I am the Chair of the ABA IP Section's Committee on
17 Performance and Sound Recording Copyrights and I teach Cyberlaw at Hastings College of the Law. I
18 have also worked on a number of high-profile copyright cases, including representing Google in the
19 Google book search copyright cases against the Authors Guild, and representing Shepard Fairey in his
20 fair use litigation against the Associated Press over the Obama Hope poster. On this matter, I have billed
21 my time at \$490 per hour.

22 6. Michael Page graduated from Boalt Hall, University of California, Berkeley Law School
23 in 1991. He is a partner at Durie Tangri practicing intellectual property and privacy litigation and he is a
24 member of the San Francisco Bay Area Intellectual Property Inns of Court. He has also worked on a
25 number of high-profile copyright cases including acting as lead counsel for Grokster against all of the
26 major motion picture studios at the District Court, Ninth Circuit, and Supreme Court levels. On this
27 matter, he has billed his time at \$680 per hour.

7. Michael Feldman graduated from Stanford Law School in 2011. He is an associate at Durie Tangri. He has billed his time on this matter at \$350 per hour.

8. Durie Tangri has earned numerous awards for our work in intellectual property law. Last month, The Legal 500 named Durie Tangri the Copyright Team of the Year. Managing IP awarded Durie Tangri the 2013 Copyright National Award. US News Best Lawyers has ranked Durie Tangri among the best law firms in the U.S. every year from 2011 through today. Chambers USA has listed Durie Tangri as a leading firm in intellectual property every year since 2011.

9. Automattic has paid the costs and attorneys' fees in this matter and requests that the Court award these costs and attorneys' fees as provided in 17 U.S.C. § 512(f). Durie Tangri charged its standard rates for this matter, and in my experience, those rates are competitive with, and in fact typically lower than, the attorneys in this market and others against whom we regularly litigate, as demonstrated by the authorities set forth below.

10. For instance, the American Intellectual Property Law Association ("AIPPLA") Economic Survey Benchmark Tool from 2013 shows that the median billing rate from two years ago, in 2012, for IP attorneys in San Francisco was \$547 per hour. This is about \$60 more per hour than my rate, \$200 more per hour than Michael Feldman's rate, and about \$130 more per hour than the average billable rate for the fees Automattic now seeks.¹ Exhibit A, attached to this declaration is a true and correct excerpt from the 2013 AIPPLA Economic Survey Benchmark tool. I have added the highlighting emphasis.

11. Courts in this district have approved rates substantially higher than those Durie Tangri charges. For instance, in *St. Louis Police Ret. Sys. v. Severson*, 12-CV-5086 YGR, 2014 WL 3945655, *5 (N.D. Cal. Aug. 11, 2014), Judge Gonzalez Rogers approved rates of \$650 per hour for partners and \$350 per hour for associates, higher than the average rate our attorneys charged for this case. In *Apple v. Samsung*, 2012 WL 5451411 (N.D. Cal. Nov. 7, 2012), Magistrate Judge Grewal approved rates as high as \$800 per hour for partners and as high as \$498 per hour for associates.

¹ As shown in Exhibit C, Automattic seeks an award of attorneys' fees for 25.8 hours of my time, 26.5 hours of Michael Feldman's time, and 0.9 hours of Michael Page's time. Based on the billing rates shown in the chart and charged to Automattic, the average billable rate was \$418.50 per hour.

13. Exhibit C, attached to this declaration, is a chart showing the true and correct time, rate, and task each Attorney billed for which Automattic is seeking an award of attorneys' fees. In total, Automattic requests that the Court enter default judgment and award Automattic a total of \$22,264 in attorneys' fees.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 25, 2014 in San Francisco, California.

JOSEPH C. GRATZ